



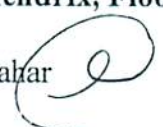
RAVALLI COUNTY ATTORNEY

George H. Corn, County Attorney
T. Geoffrey Mahar, Chief Deputy
John Bell, Deputy
Karen Mahar, Deputy
William E. Fulbright, Deputy

Ravalli County Courthouse
205 Bedford Street, Suite C
Hamilton, MT 59840
Phone (406) 375-6750
Fax (406) 375-6731

MEMO

TO: Laura Hendrix, Floodplain Administrator

FROM: Karen Mahar 

DATE: July 11, 2008

RE: Information provided by Paul Dannels regarding maintenance of levee on Dannels' property

Dear Laura:

I have reviewed the Findings of Fact and invoices submitted to Commissioner Chilcott by Paul Dannels on July 7, 2008. I forwarded the originals to you that same day for your floodplain file.

I also received and reviewed your email correspondence of July 7, 2008, which confirms that the current levee on Mr. Dannels' property is not a Corps levee. Further, it is my understanding from your inspection of maps that the levee on Mr. Dannels' property is a different and separate levee from the levee located near the Woodside Cutoff Bridge on Mr. Bargfrede's property.

First, as we discussed on July 7, 2008, the Findings of Fact produced by Mr. Dannels pertain to a subdivision that was approved for Mr. Bargfrede's neighboring property. Any "obligation" these documents might create to maintain a levee on Mr. Bargfrede's property would not also obligate the County to maintain Mr. Dannels' levee.

In regard to the levee on Mr. Bargfrede's property, the Findings of Fact and related documentation for the Rivercrest Campground subdivision do not evidence a County obligation to maintain the levee absent the need to protect Woodside Cutoff Road and the Woodside Bridge. Rather, the documents expressly grant Ravalli County an easement to maintain the levee as "necessary to protect the Woodside Crossing Road and Bridge." *Easement to Ravalli County* recorded March 4, 1993. It is important to note that when this easement was recorded, the County also required Mr. Bargfrede to record a contingency plan to evacuate his property if flooding occurred, as well as a waiver which specifies that Ravalli County is in no way responsible "to protect the subject [Bargfrede] property from flooding or channel changes of the Bitterroot River." These documents, when viewed as a whole, show that Ravalli County was not undertaking an obligation to maintain the bank of the river

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for adjacent property owners, but was simply ensuring access to maintain the Bargfrede levee as necessary to protect the public infrastructure of road and bridge.

I believe it has also been noted for Mr. Dannels previously, but I highlight again that Resolution 1074, adopted by the County Commissioners on May 15, 2000, expressly transferred responsibility for maintenance of the Woodside Cutoff secondary roadway to the Montana Department of Transportation (MDT) pursuant to changes in Montana state law. As of that date, MDT assumed "all maintenance responsibility for this route effective July 1, 2000...." Thus, any current responsibility for protecting the road and bridge would be that of MDT, who has examined the situation and stated that they do not believe the road or bridge are endangered or affected by the Dannels' levee.

I assume that Mr. Dannels is relying on language on page 3 of the Findings of Fact which states:

The possibility of future channel changes was considered. In the opinion of the staff it is improbable given the County's obligation to maintain the present dike that these changes will adversely affect the proposal.

Again, on its face, this language only pertains to Mr. Bargfrede's property. However, the reference to "the County's obligation" would be the obligation to protect Woodside Cutoff Road and the Woodside Bridge. There is no indication in the documents that have been recorded that the County ever undertook an obligation to stabilize the bank of the river if the Road and Bridge were not endangered.

Finally, the invoice provided from Ms. Bumbarger does not provide any verification of a County responsibility. Rather, Ms. Bumbarger opines to Mr. Dannels that he "should get [his] money back *if this is the County's responsibility.*" Although I can understand Mr. Dannels' frustration with erosion of his bank, I can find no legal authority authorizing the County to intervene any more than the emergency action they already took, at County expense, to assist Mr. Dannels temporarily on June 16, 2008. Unfortunately, the County does not have authority or resources to assist private property owners with stabilization of the river bank during a flood season unless repair or replacement of severely damaged public transportation facilities, public water and sewer facilities, or flood control works require such intervention.

Please let me know if you receive additional information for the County to consider in this matter. Otherwise, Mr. Dannels should proceed as required by the Ravalli County Floodplain Regulations for any work that needs to be done on his property.

cc: Ravalli County Commissioners
Dave Ohnstad, Road Department